IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 542 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMESH @ NANNU NITINBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR BC DAVE for Petitioner

MR BY MANKAD, APP for Respondent

CORAM : MR.JUSTICE J.R.VORA

Date of decision: /11/2001

C.A.V. JUDGEMENT

1. This Revision Application is filed against the order passed by learned City Sessions Judge, Court No.2 below Application Exh. 3 in Session Case No. 207 of 2000 by which learned Addl.Sessions Judge rejected application Exh. 3 filed by some of the accused

including present petitioner for discharging them for the offences for which charge sheet is submitted against them.

2. As per the brief facts of the case against about as many as 14 to 16 accused including present petitioner accused No.9, DCB Police Station submitted a charge sheet for the offences punishable under Sections 120(B), 121, 121(A), 122, 123, 212 and under Section 25(1), (A), (E) and 27 of the Arms Act in pursuance of Crime Register No. I-4/2000. Complaint of which came to be filed on 20th January, 2000. Though name of the present petitioner is not disclosed in the FIR, whose involvement was discovered during the course of investigation. As per the brief facts of the case sought to be made out against the accused including present petitioner, serious charges are being levelled. It is alleged that the accused in the said case are the members of Babar Khalsa group and they planned criminal conspiracy and remained in contact by telephone with Chhota Rajan of the under world of Bombay. All of them attempted to create disharmony and terror in India and to disturb the peace and tranquility. In conspiracy, the accused prepared a plan to manufacture weapons, to implement their terrorist intentions and it was their plan to instal a factory near the border of Gujarat and Rajasthan near Pakistan and to transport arms and ammunition in this country and to create terror. For raising wherewithals for their horrible intention, the accused intended to implement a plan to kidnap the then Chief Minister of Gujarat State Shri Amarsinh Chaudhary and one Dr. Amit Shah, a wealthy citizen of the State in pursuance of the conspiracy which was hatched by the accused. The accused also conspired to supply necessary deadly weapons and vehicles for implementation of the above said plans and, therefore, the above said charges are levelled against the accused including the present petitioner.

3. It appears that since there are charges against the accused for waging the war against the State and required sanction under Section 196(1) of the Criminal Procedure Code was not obtained at the relevant time, the present petitioner filed a Criminal Misc. Application No. 2003 of 2000 in this Court for quashing of the proceedings and vide order dated 6th October, 2000, this Court relying on decision of the Supreme Court in the matter of BIRENDRA K. SINGH vs. STATE OF BIHAR, reported in JT 2000 (8) 238. While dismissing the petition this Court directed the present petitioner to raise the issue before the Trial Court while framing of the charge. However, raising the contention relying upon

a decision of the Apex Court in the matter of ABDUL WAHAB ANSARI vs. STATE OF BIHAR, reported in 2000(4) Crimes 152 (SC) the Application Exh. 3 came to be filed by some of the accused including petitioner for the discharge on facts as well as on the count that since the required sanction under Section 196(1) of the Code of Criminal Procedure has not been obtained and as per the above decision of the Supreme Court, the accused is not required to wait till the framing of the charge to raise this plea, the accused are required to be discharged and the court is not empowered to take cognizance in absence of sanction under Section 196(1) of the Criminal Procedure Code.

4. The factual data and certain dates will be material for deciding the issue.

A charge sheet in the Metropolitan Magistrate Court came to be filed on 12th of April, 2000 and the same was registered on 13th April, 2000 by the Court of Metropolitan Magistrate. The case being triable exclusively by the Court of Sessions, the Metropolitan Magistrate vide order Exh. 18 committed the case to the Court of City Sessions vide Order dated 4th May, 2000 and the sanction under Section 196(1) of the Cri. Procedure Code was obtained on 7th May, 2000, and Court of Sessions has yet not framed the charge against the accused.

On filing an Application Exh. 3 before the Court of Sessions for discharge of the accused on both the counts on facts as well as law points and since the same came to be rejected by the Court of Sessions, this Revision is filed by the original accused No.9.

5. Learned Advocate Mr. Bharat C. Dave for the petitioner revisionist and learned APP Mr. B.Y. Mankad for the respondent - State of Gujarat were heard.

6. Main contention which was urged on behalf of the petitioner is, the whole proceedings including the proceeding to commit the case to the Court of Sessions is an illegality and, therefore, the proceedings are required to be quashed because the required sanction under Section 196(1) of the Cri. Procedure Code was not obtained. Relying upon Section 196(1) of the Criminal Procedure code, learned Advocate Mr. Dave vehemently argued that the Metropolitan Court took the cognizance of the offence while committing the case to the Court of Sessions and Section 196(1) of the Code operates as an absolute bar on taking the cognizance and, therefore, the committal proceedings is an illegality and is required to

be quashed. Learned Advocate has placed reliance on a decision of this Court in the matter of SHALIBHADRA v. SWAMI KRISHNA BHARTI, reported in 1980 GLR 881, wherein it was held that without the sanction under sub-sec. (1) of Sec. 196 of the Criminal Procedure Code, Magistrate cannot take cognizance and issue process where such sanction is required. Learned Advocate Mr. Dave also relied upon a decision of the Supreme Court in the matter of STATE OF U.P. vs. LAKSHMI BRAHMAN, reported in AIR 1983 SC 439 and a decision of this Court in the matter of STATE vs. ALAMZEBKHAN JANGREZKHAN ALI, reported in 1985 (1) GLR 492 and contended that while committing the case to the Court of Sessions, the Magistrate has to follow the procedure as per Sections 207, 208, etc and the same is enquiry, therefore, the Magistrate takes cognizance of the offence before he commits the case to the Court of Sessions. It was contended that the Magistrate took the cognizance of the offence without the previous sanction of the State Government as envisaged by sub-sec. (1) of Section 196 of the Criminal procedure code and committed an illegality when on 4th May, 2000 the committal order was passed, there was no sanction and Magistrate took the cognizance of the offence committing the illegality. It was therefore urged that the whole proceedings is illegal ab initio, and requires to be quashed and accused are required to be discharged because if the committal order is quashed, Sessions Court cannot take cognizance of the offence. Learned Advocate Mr. Dave contended that it is the Magistrate who takes the cognizance first and if the committal order is quashed, the Sessions Court cannot take the cognizance of the offence. It is urged that therefore the accused are required to be discharged. For that, learned Advocate Mr. Dave relied upon a decision of the Supreme Court in the matter of ANIRUDHSINHJI KARANSINHJI JADEJA vs. STATE OF GUJARAT, reported in AIR 1995 SC 2390 and in the matter of RAMBHAI NATHABHAI GADHVI vs. STATE OF GUJARAT, reported in AIR 1997 SC 3475, where the Supreme Court quashed the whole proceedings under the TADA Act where no valid sanction was obtained by the prosecution and it was urged that therefore the proceedings are required to be quashed ab initio. On facts, it was urged that there is no prima facie case against the present petitioner. In fact, the present petitioner was arrested from Swaminarayan Temple at Sarangpur and police falsely involved the present petitioner stating that the petitioner was arrested at Ahmedabad near Sarangpur Circle. It was urged that the petitioner is not at all connected with the crime and he has been falsely implicated and there is no prima facie evidence against him to proceed for the charges levelled against him. It was urged that therefore the order of

the learned Sessions Judge rejecting the Application Exh. 3 for the discharge of the present petitioner for the offences charged against him is illegal, erroneous and incorrect and requires to be set aside, and the proceedings are required to be quashed.

7. As against that, the learned APP Mr. B.Y. Mankad vehemently urged that it is not necessary that while committing the case to the Court of Sessions, Magistrate shall have to take the cognizance of the offence. In this particular case, firstly, the Magistrate has not taken the cognizance of the offence and committed the case to the Court of Sessions and the Court of Sessions which is empowered to try the accused has not still frame the charge. The Court of Sessions has yet to record the evidence and before that the sanction is obtained on 7th May, 2000. At the most, the proceedings up-till-now is said to be an irregularity under Section 460(e) of the Code of Criminal Procedure where if at all it is held that the Magistrate took the cognizance. It was therefore urged that firstly, the Metropolitan Magistrate did not take the cognizance of the offence as contended on behalf of the petitioner and, secondly, if at all the cognizance has been taken by the Magistrate and has committed the case, then also, the sanction is obtained before the Court of Sessions frames the charge against the accused, and for that the proceedings are not required to be quashed for the want of sanction and on the ground of illegality. During proceedings, even before the framing of the charge by the Sessions Court, when sanction is obtained, the purpose of law according to learned APP is served and it cannot be said that the whole proceedings is an illegality, ab initio and fresh proceedings should be initiated. Learned APP has relied upon certain decisions which will be discussed hereinafter.

8. Having heard learned advocates and having gone through the papers, the second submission of Mr. Dave on facts is required to be resolved first. It is contended that there is no prima facie evidence against the present petitioner to frame the charge, and that what is stated by the present petitioner as an accused by way of defence is required to be taken into consideration by the learned Sessions Judge while dealing with the request of the accused to discharge him. It was contended that the petitioner is not connected at all with the crime as has been attempted by the police to involve the petitioner in the crime. Having perused the necessary papers, it clearly appears that there is evidence to show that one accused named Sanjansingh Gyani Bhagatsingh of Amrutsar

and one other accused Ashok Anna of Mumbai and accused Ibrahimkhan alias Chacha Hasankhan Pathan, resident of Rajasthan were assigned the task of kidnapping the then Chief Minister Shri Amarsinh Chaudhary for which some preparation to implement the plan was made and the location of the resident of the then Chief Minister of the State was also watched and observed by these accused. In evidence at the present, it is revealed that one white Santro Car, the number of which at the relevant time was GT-1-BK-5313 was to be used for kidnapping the then Chief Minister of the State of Gujarat. The vehicle appears to have been stolen. The evidence discloses that such map of the roads were also prepared by the accused. There is a prime revelation of the fact through the evidence that the present petitioner was found in possession of such white Santro Car of the above numbered on road by the police on information near Sarangpur Circle at Ahmedabad. So far as the present petitioner is concerned, these circumstances are unexplained which indicates the connection of the present accused with this heinous serious crime. By no stretch of reasoning therefore it could be said that there is no evidence prima facie to proceed with against the present petitioner. The genuineness, trustworthiness and the truthfulness of the evidence is not required to be put to scale at this juncture, but for this evidence, the prosecution must be given a chance to prove what is proposed by it. The accused - present petitioner may plead the defence at relevant stage which he attempts to plead now, but by the means of judicial scrutiny, at present, it could not be established that the defence of the accused that he was arrested near the Swaminarayan Temple, Sarangpur and that fact is trustworthy and what prosecution proposes is not trustworthy. In such circumstances, the law as laid down by the Courts is very clear that at the initial stage, the true veracity and the effect of the evidence which the prosecution proposes to adduce cannot be meticulously judged nor any weight is required to be attached to the defence of the accused. At this stage, it could not be said that a judge should sit with the golden scale and weigh the defence of the accused against the evidence the prosecution proposes to adduce against the accused and come to a reasoned decision. It is also not required that the evidence which prosecution proposes to adduce must be so cogent evidence as to result in conviction. If grave suspicion is raised against the accused, then it can be said that there is a prima facie case to proceed against him. The principle for the scrutiny of the evidence which are applicable for arriving at a final decision is not made applicable at the initial stage and, therefore there are sufficient grounds in the facts and

circumstances of this case to proceed against the present petitioner who apparently surfaces to have involved himself in a very serious crime as described by the prosecution. The request of the discharge of the petitioner on this ground must be turned down and the learned Sessions Judge rightly did so. No interference therefore is required in the order impugned on this ground.

9. So far as the next contention is concerned which covers the legal aspect, it will have to be seen that whether the learned Metropolitan Magistrate had taken the cognizance of the offence and, if so, then what is the effect of the same on committal proceedings. Undoubtedly, the required sanction is obtained before the court of Sessions frames the charge against the accused and trial is initiated. Needless it is to say that taking of the cognizance by the Magistrate, it is meant to that the Magistrate has applied his mind to the contents of the case which constitutes the offence. The act of taking the cognizance by the Magistrate has not been defined in Criminal Procedure Code and, therefore, whether the Magistrate has taken the cognizance or not solely depends upon the facts and circumstances of the case. Even then, it is certain that the Magistrate takes the cognizance when he applies his mind to the contents of the case. This is not enough, but the Magistrate for taking the cognizance not only to apply his mind to the contents of the case but he must do so for the purpose of proceeding in particular way as indicated in the subsequent provisions of Chapter i.e. proceeding under Section 200 and thereafter. It therefore necessary follows that when Magistrate even if he applies his mind but not intends to proceed in particular manner as indicated in the subsequent provision towards the trial, then, by no stretch of reasoning, it could be said that the Magistrate is taking the cognizance. The High Court of Kerala in the matter of STATE OF KERALA vs. NEDIYIRUPPA PANCHAYAT, COMPLAINANT, reported in AIR 1969 Kerala 111 after referring to a decision of the Supreme court in the matter of R.R. CHARI vs. STATE OF U.P., reported in AIR 1951 SC 207 observed in para 10 as under:

> "10. We now come to the question whether the Sub-Divisional Magistrate has power to take cognizance of a Panchayat offence under Section 190(1)(c) of the Code, though he has no power to try it. To a large extent, the answer to this question depends on the meaning of taking cognizance of an offence under the Criminal Procedure code. There are a number of decisions

of the Indian High Courts and the Supreme Court on this question. We shall refer only to a few decisions of the Supreme Court. In R.R.Chari v. State of U.P., AIR 1951 SC 207, the question arose whether cognizance of an offence under Section 165 of the Indian Penal Code was taken by the Magistrate, when he issued a warrant for the arrest of the accused on the application of the police, or only when he issued a notice to the accused under Section 190 of the Criminal Procedure Code for his appearance. The Court quoted the following passage from the judgment of Das Gupta, J. Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Abani Kumar Banerjee, AIR 1950 Cal. 437 as stating the correct approach to the question :

" What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding, in a particular way as indicated in the subsequent provision of the Chapter, proceedings under Section 200 and thereafter sending it for an inquiry and report under Section 202. When the Magistrate applies his mind, nor for the purpose of proceeding under the subsequent sections of this Chapter but for taking the action of some other kind e.g. ordering investigation ..... under Section 156(3), or issuing a search warrant for the purpose of investigation, he cannot be said to have taken the cognizance of the offence."

Then the Court said :-

" In the present case, on 25.3.1949, the Magistrate issued a notice under Section 190 Criminal Procedure Code against the appellant and made it returnable on 2.5.1949. That clearly shows that the Magistrate took the cognizance of the offence only on that day and acted under Section 190, Criminal Procedure Code."

In Narayandas Bhagwandas vs. State of West

Bengal, AIR 1959 SC 1118 and in Gopaldas vs. State of Assam, AIR 1961 SC 986, the Supreme Court again quoted the above passage from the judgment of Justice Das Gupta as stating the correct law. In the latter case, it adds:-

" It would be clear from the observation of Mr. Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of Chapter XVI, but for taking action of some other kind, e.g. ordering investigation under Section 156(3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. "

11. This clearly indicates that while committing the case to the Court of Sessions, it cannot be said that the Magistrate is taking a cognizance of an offence. In Para 11, the High Court of Kerala in the above said decision observed clearly as under :

" It appears to us on the authority of the statements of law contained in the above decisions, that taking cognizance of an offence can only be for the purpose of initiating legal proceedings under any of the provisions of the Code. If a Magistrate has no power to take any proceedings in respect of an offence brought to his notice, he is not competent to take cognizance of that offence. Taking notice of the commission of an offence and keeping the matter to himself without being able to take any action thereon for want of power, would not amount to taking cognizance. In other words, the power to initiate proceedings, against a person accused of an offence, is a condition precedent for taking cognizance of the offence. A Magistrate, who has no power to try a person charge with an offence or to commit him for trial is not competent to take cognizance of that offence."

12. The above said two decisions on which the heavy reliance is placed by learned Advocate Mr. Dave i.e. decision of the Supreme Court in the matter of STATE OF U.P. vs. LAKSHMI BRAHMAN, as reported in AIR 1985 SC 439 and a decision of this Court in the matter of STATE vs. ALAMZEBKHAN JANGREZKHAN ALI, reported in 1985 (1)

GLR 492, cannot be construed to have laid down a law that Magistrate has to take invariably cognizance of an offence while committing the case to the Court of Sessions. The ratio of the above two decisions is, the committal proceedings before the Magistrate is an enquiry as envisaged by the Code of Criminal Procedure and, therefore, Magistrate has power to remand the accused to the custody subject to the provisions of the bail because in both the above said decisions, it has been held that the Court of Sessions takes cognizance only when the case is committed to it and not before that. At the initial stage if any cognizance be taken by any Court, then, the same will be by the Court of Magistrate and not by the Court of Sessions, but however, in these decisions it has been never laid down as contended that the Magistrate has to take the cognizance while committing the case to the Court of Sessions. On the contrary, these two decisions supports the view taken by the High Court of Kerala in the matter of STATE OF KERALA vs. EXECUTIVE OFFICER, NEDIYIRUPPU PANCHAYAT, reported in AIR 1969 Kerala 111. In both the decisions relied upon on behalf of the petitioner, it has been laid down that the committal proceedings is an enquiry before the Magistrate. It is not necessary therefore that during enquiry Magistrate is obliged to take the cognizance of the offence. The glaring example is Section 200 of the Criminal Procedure Code when Magistrate conducts enquiry before issuing process under Section 204 of the Criminal Procedure Code. When the Magistrate resorts to this provision under an enquiry, the established law is the Magistrate is not taking the cognizance unless the Magistrate issues process under Section 204 and, therefore, the committal proceedings before the Magistrate is an enquiry and it is not necessary that while committing the case to the Court of Sessions invariably the Magistrate has to take cognizance. It cannot be laid down that unless Magistrate takes cognizance, he cannot commit the case to the Court of Sessions. In this case it is urged that the cognizance is taken by the Magistrate because he has committed the case to the Court of Sessions and that the Magistrate cannot commit the case to the Court of Sessions unless he takes the cognizance of the offence. Hence, it is urged that taking cognizance by the Magistrate and committal of the case to the Court of Sessions without the previous sanction under Section 196(1) of the Code of Criminal Procedure is illegality vitiating the whole proceedings. There is no substance in this contention. True it is that the accused can raise this plea at any time as established by the Supreme court in the matter of ABDUL WAHAB ANSARI vs. STATE OF BIHAR, reported in 2000(4) Crimes 152 (SC) and the

accused is not required to wait till framing of the charge. If the application of the accused is decided and till then if no sanction is obtained, sanction being pre-condition for taking cognizance, it will have to be held that the Court dealing with the question cannot have a jurisdiction to take the cognizance, but the facts of this case are different that the case is committed to the Court of Sessions, the Magistrate undoubtedly has not taken the cognizance of the offence while committing the case to the Court of Sessions and before the Sessions Court frames the charge against the accused, the required sanction under Section 196(1) of the Code is obtained. In these circumstance, it is futile to quash the prosecution ab initio by which no purpose of law would be served.

13. Even if the Magistrate takes cognizance without the sanction and at appropriate juncture i.e. before the recording of the evidence or framing of the charge the sanction is obtained, then also, the prosecution cannot be relegated to take recourse to fresh proceedings. In these circumstances taking of the cognisance by the Magistrate or the Court of Sessions would be mere an irregularity and not an illegality. This view has been taken by various High Courts. In recent Division Bench decision, the High Court of Bombay in the matter of JAYSINGH WADHU SINGH vs. STATE OF MAHARASHTRA, reported in 2001 Cri. L.J. 456 took the view that Special Court was not debarred from framing of the charges and of trial of the accused for offences under the Prevention of Corruption Act because the sanction was not produced before framing charge. In Para 38, the High Court of Bombay observed as under :

"38. It was then contended that under Section 19 of the Prevention of Corruption Act, no Court can take cognizance of offence punishable under Section 13 except with previous sanction by the appropriate authority. In this case, the cognizance of offence under the Prevention of Corruption Act could not be said to have taken on 8th August, 2000 or thereafter and production of the sanction order before the Special Court on 9th August, 2000 i.e. after the Special Court having already taken cognizance on 12th June, 2000 would not enable the Court to try the offence punishable under Prevention of Corruption Act. A decision of the Federal Court in the case of Basante Chandra Ghose v. Emperor, reported in AIR 1945 Federal Court 16: (1945 (46) Cri LJ 510) was relied upon by learned Counsel for the

petitioner. The Federal Court, in its decision, having regard to the provisions of Clause 16 of the Drugs Control Order (1943) held that the "words of clause 16 of this Order are plain and imperative, and it is essential that the provisions should be observed with complete strictness and where prosecutions have been initiated without the requisite sanction, they should be regarded as completely null and void, and if sanction is subsequently given, new proceedings should be commenced ab initio." It was contended that since the sanction was filed and produced before the Court after its taking cognizance on 12th June, 2000, the proceedings should have been commenced ab initio, as laid down in this decision cited supra, and since it was clarified by the Special Public Prosecutor before the Special Court on 9th August, 2000 that the prosecution would not file another charge sheet, the Special Court was not competent to frame charge and to hold the trial for the offence punishable under the Prevention of Corruption Act. It may be noted that purpose behind securing sanction to prosecute the public servant is that the public servant is not subjected to any vexatious or malicious prosecution. It would further be also noted that as per Section 190 of the Code of Criminal Procedure, the Court has to take cognizance of certain set of facts which constitutes offence. The charge sheet is to be filed by the police but it is ultimately for the Court to frame the charge by finding out from the investigation papers as to what offences are made out therefrom. The evidence was already collected at the charge sheet was submitted. From the investigation papers therein, it was for the Special Court to find out as to whether material collected, inter alia, revealed commission of offence punishable under the Prevention of Corruption Act. In such set of circumstances, merely because the charge came to be filed earlier than the date of production of the sanction order before the Court, it cannot be said that the Court would not have jurisdiction to frame charge and hold the trial of the accused for the offences punishable under the Prevention of Corruption Act particularly when the sanction order was produced before framing of the charges. The Federal Court decision would not be of any avail to the petitioner in the instant case since

the sanction order therein was produced before the Magistrate when already the case was fixed for evidence i.e. when the prosecution had already been set in motion and various steps were taken."

14. The High Court of Bombay in the matter of EMPEROR vs. KALLAPPA DUNDAPPA RUDRANNAVAR, reported in AIR 1927 Bom. 21, took the same view and observed as under :

" The committal proceedings are only an "inquiry" as defined in Clause (k) of S.4 of the Criminal Procedure Code and as if shown by the heading to Chapter 18 of the Code. An Offence under S.4 of Act 6 of 1908 is triable exclusively by a Court of Session: (see Schedule 2 "Offences against other laws," Criminal P.C.). In a case exclusively triable by a Court of Session, the trial begins only after the commitment and the framing of the charge : cf. Narayanaswamy Naidu v. Emperor [(1909) 32 Mad.]. Therefore, we are of opinion that it is not necessary to quash the committal proceedings; for the want of the sanction does not invalidate those proceedings any more than the proceedings of the preliminary Police inquiry. As, however, the Sessions Judge cannot proceed with the trial of the accused on that commitment without the requisite sanction, he should arrange to postpone the trial till it is obtained. The proceedings should be returned with these remarks."

15. The Calcutta High Court in the matter of ALI MIA v. EMPEROR, reported in 28 Cr.L.J. 1927, 466, held as under :

" Held, that the Magistrate took cognizance of the case under S. 120-B of the Penal Code not when he issued the warrant, but only when he framed the charge and inasmuch as the date of framing the charge was subsequent to the order of the Government giving consent to the prosecution, the trial was not illegal for want of previous consent under S.196-A, Criminal Procedure Code."

16. The Calcutta High Court in the matter of ABDUL RAHMAN vs. EMPEROR, reported in AIR 1935 Cal. 136, observed as under :

" The provisions of S. 196-A are designed to provide a safeguard against the initiation of

> vexatious prosecution for criminal conspiracies of the kind indicated in the section. The section is certainly not intended to provide a means of escape for persons who have been convicted on charges brought against them even though those charges relate to the kind of offences indicated in the section. When the consent is obtained only subsequent to the initiation of proceedings and none of the accused has been prejudiced in his defence, the defect is merely a technical one and does not make the trial illegal."

17. The High Court of Delhi in the matter of SHRI CHARAN SINGH vs. SHRI M.R. DHAWAN, reported in 1983 Crimes 866 took the view that previous sanction under Section 197 of the Criminal Procedure Code is required before the very commencement of the process of taking the cognizance. But failure to furnish sanction before cognizance is taken and production thereof after process is issued but before pre-charge evidence is commenced, is not an illegality and is at best a curable irregularity under Section 465 of the 1973 Code.

18. In view of the above, there is no substance in the contentions that the Magistrate invariably takes cognizance while committing the case to the Court of Sessions and since there is absolute bar under Section 196(1) of the Criminal Procedure Code and the Magistrate has taken cognizance while committing the case to the Court of Sessions, the whole proceedings are required to be quashed. On the contrary, the law as discussed above, is clear that the Magistrate is not taking the cognizance while committing the case to the Court of Sessions and it is simply an inquiry as envisaged by the Code. The trial against the accused is still to be commenced and charge is still to be framed and before that the sanction is produced on 7th May, 2000 and by no stretch of reasoning it can be said that the proceedings are invalid or illegal because sanction was produced before the Court of Sessions only. On fact as discussed above, it is found that there is a prima facie evidence to proceed against the accused.

19. In this view of the matter, this Revision Application must fail and is dismissed accordingly. Rule is discharged. Interim relief granted by this Court and extended from time to time is further extended for two weeks from today and there after there will be no extension.

(J.R. Vora, J.)
p.n.nair

Dt: 03.11.2001

Oral request on behalf of learned Advocate for the applicant to grant leave to file Appeal to the Supreme Court is rejected. However, interim relief which is extended for two weeks is extended for 3 weeks from today.

(J.R. Vora, J.)
dt. 3.11.2001